

Appendix B to report dated 27/1/99 to Regional Land Transport Committee

15-SEP-99 14:28 FROM: OAKLEY MORAN

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15 September 1999

Dr David Watson
Regional Transport Division
WELLINGTON REGIONAL COUNCIL

By fax 8020-352

Dear Dr Watson

REGIONAL TRANSPORT MOT

We refer to our telephone conversation today concerning the **Regional Land Transport Strategy and the letter to Mr McDavitt concerning that strategy from Alistair Bisley, for the Secretary** for Transport

WC confirm we **have perused Mr Bisley's letter**. We **understand** from you **that** his concerns **relate** to section **175(2)** of the **Land Transport Act 1998** which **reads in part**:

- “(2) Every regional land transport strategy prepared under this section must—
- (a) Identify the future land transport needs of the region concerned; and
- (b) Identify the most desirable means of responding to such needs in a safe and cost effective manner, having regard to the effect the transport system is likely to have on the environment; . . .”

Essentially, Mr Bisley is of the view that the **Wellington Regional Council** has not fulfilled its obligations under **s175(2)**, or at least not to the satisfaction of the **Secretary for Transport**. Mr Bisley suggests that as a result of this there is a risk that the **1999-2004 proposals** may not be “binding” on those affected by the strategy.

You wish to know whether **s175(2)** imposes any particular obligations on the **Council** as to the standard of the strategy prepared, and whether our earlier opinion (that is, that the strategy complies with the Act) has altered in light **Mr Bisley's letter**.

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As to the required standard of the transport strategy, it is clear that the Council is obliged to "identify the most desirable means" (s175(2), emphasis added) of responding to the transport needs of the region. It is clear that if the Council fails to identify the most desirable means, or identifies and adopts undesirable means, it will be in breach of the Act.

However, any legal challenge by a person or organisation who simply has a differing view from the Council as to what is desirable is unlikely to be successful, in the absence of unreasonableness, unfairness or bad faith on the part of the Council. The Courts have long been reluctant to disturb decisions of public bodies in the absence of the factors just mentioned.

In view of the above our original opinion remains unchanged.

Please do not hesitate to be in touch if you wish to discuss the matter further.

Yours faithfully
OAKLEY MORAN



Sandra Moran/Peter Cranney